IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE EIGHTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 6791 of 2002

Between:

S.Nagamma W/o M.Subramanyam, Attender,
Commercial Tax Officer 1 Office, Chittoor, Chittoor Dist.

..... PETITIONER

AND

1 The Commercial Tax Officer-I, Chittoor,
Chittoor District.
2 The Deputy Commissioner of Commercial Taxes
Chittoor, Chittor Dist.

(R-1 is substituted as per Court order,

dt.08.04.2005 in WPMP.No.10042 of 2005.)

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ , order or direction in the nature of Mandamus or otherwise declaring the proceedings Rc.No.A1/26/2000 Dt:10-8-2000 issued by the 1st respondent and consequential orders of the Hon'ble Tribunal Dt:27-3-2002 in O.A.No.5068/2000 as arbitrary ,illegal ,unconstitutional violating Article 14,16,& 21 of the Constitution of India and also ultra-vires to Rule 20 of the AP CS (CCA) Rules, 1991 and set aside the same in the interest of justice as otherwise will be put to irreparable loss and

injury and pass such other order or orders as it deems fit and proper.

Counsel for the Petitioner: MR.P.V.KRISHNAIAH

Counsel for the Respondents: GP FOR SERVICES II

The Court made the following:

ORAL ORDER:- (PER GB,J.)

The Writ Petition is filed assailing the order, dated 27.3.2002, passed by the A.P. Administrative Tribunal in O.A.No.5068 of 2000.

2. The petitioner was the applicant before the Tribunal. She assailed the order of dismissal, dated 10.08.2000, issued by the 1st respondent.

3. It is the case of the petitioner that she appointed in the year 1999 in pursuance of limited recruitment to fill up the backlog post of Scheduled Caste in the category of attender. However, when the probation was sought to be declared, enquiry was made with regard to the actual marks obtained by the petitioner in the qualifying examination. It appears that the District Educational Officer, Chittoor district has intimated the Commercial Tax Officer-1, Chittoor that the marks sheet of the petitioner was not genuine and thereupon a show-cause notice was issued on 28.07.2000 by the authorities. The said order came to be challenged before the Tribunal in O.A.No.4742 of 2000.

4. The Tribunal, after considering the matter, disposed of the O.A. with the following direction:

> "In view of the above facts and circumstances of the case, we hold that it is too premature for the Applicant to approach this Tribunal for necessary redressal. At any rate, the applicant is at liberty to prefer an appeal against the impugned show cause notice, dated 28.07.2000 to the concerned appellate authority within a period of one week from the date of receipt of a copy of this Order and on such appeal being filed, the concerned appellate

> authority is directed to dispose of the appeal of the applicant in accordance with rules and as per law within a period of one month thereafter. Pending passing of orders by the appellate authority, the Respondents are directed not to take further action in pursuance of the impugned show-cause notice, dated 28.07.2000 issued by the 1st respondent."

5. The Tribunal passed the order on 10.08.2000, on the very same day the order of dismissal came to be passed by the authorities on the ground that the petitioner has not submitted her explanation to the show-cause notice, dated 28.07.2000. Against the order of dismissal, dated 10.08.2000, the petitioner filed O.A.No.5068 of 2000 with VMA.No.369 of 2001.

6. The Tribunal holding that there was no procedural irregularities and that since show-cause notice was given, it is compliance of principles of natural justice, and therefore, refused to interfere with the order passed by the authorities and dismissed the O.A., against which the present Writ Petition has been filed.

7. Learned counsel for the petitioner submits that the petitioner was dismissed from service with a misconduct and without conducting enquiry, which is violation of principles of natural justice, and therefore, conducting of enquiry is mandatory under Rules, as the termination is sought to be affected for an alleged misconduct. Hence, the Tribunal has not taken into consideration this aspect.

8. Learned Government Pleader submits that show-cause notice was given to the petitioner and since she has not given her explanation, the order of dismissal was passed, and therefore, there is no violation of principles of natural justice. Therefore, the order passed by the Tribunal cannot be said to be illegal.

9. We have heard the learned counsel for the petitioner and learned Government Pleader.

10. It is not in dispute that in this case the petitioner was appointed as an attender when the vacancy reserved in Scheduled Castes Category. The only issued that

calls for consideration is whether the enquiry is necessary?

11. In the instant case, the petitioner as on date of dismissal completed probation, but when she sought to be dismissed for an alleged misconduct, it is incumbent on the part of the authorities to conduct enquiry as required under Rules.

12. Admittedly, in the instant case, only show-cause notice was issued and no further enquiry was conducted. It is also on records that at the stage of show-cause notice it was the contention of the petitioner that the time granted to her was very limited and she sought for extension of time when the O.A. was pending and was reserved for orders. The order was passed on 10.08.2000 on which date the order of dismissal was also passed by the authorities. It is also her contention that to circumvent the order of the Tribunal, the order of dismissal has been passed. We are not inclined to go into this aspect.

13. Suffice to say that no inquiry was conducted by the authorities, which is required to be conducted in accordance with the CCA Rules. Under those circumstances, we are inclined to set aside the order of Tribunal and also the order of dismissal.

14. However, we direct the authorities to conduct fresh enquiry and pass appropriate orders in accordance with the Rules. The period between the date of dismissal and till the date of completion of the enquiry shall be treated as if the petitioner is under suspension. The entire exercise shall be done within a period of three months from the date of receipt of a copy of this order. The subsistence allowance, which accrues to the petitioner right from the date of dismissal till date, shall be paid to her within a period of six weeks.

15. With the above direction, the Writ Petition is accordingly allowed. No costs.

G. BIKSHAPATHY, J

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P.S. NARAYANA, J

Date: 08.04.2005

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To

1 The Commercial Tax Officer-I, Chittoor,
Chittoor District.
2 The Deputy Commissioner of Commercial Taxes
Chittoor, Chittor Dist.

3 2 CCs to the GP for Services-II, High Court of A.P., Hyderabad (OUT).

4 2 CD copies